IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1599 of 1988
to
First Appeal No.1602 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

GANESHBHAI SHAMJIBHAI

Appearance:
Mr.M.R. Raval, AGP, for the State in F.A. Nos. 1599 to 1600 of 1988.
Mr.H.L. Jani, AGP, for the State in F.A. Nos.1601 to 1602 of 1988

Mr.G.M. Amin for the claimants

Mr.D.K. Nakrani for Mr. Shantilal S. Shah for the respondent No.2-Union of India.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 30/03/99

ORAL JUDGEMENT

1. By means of filing these appeals under Section 54

of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has challenged legality of the common judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Acquisition Reference Nos. 24 of 1981 to 27 of 1981. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, on June 28, 1973. We may state that Land Reference Case No. 24 of 1981 was treated as the main case and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (1) open plots (2) common plots (3) private roads and (4) argricultural lands situated in the sim of village Dudharej, Taluka Wadhawan, Dist: Surendranagar, for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme', was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that open plots, common plots, agricultural lands, etc. of village Dudharej, were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on June 28, 1973. The lands to be acquired were specified in the said notification. The owners, whose lands were sought to be acquired, were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that agricultural as well as non-agricultural lands situated in the sim of village Dudharej, which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme'. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on November 14, 1974. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.15/per sq.yard i.e. Rs.17.98 ps per sq.mtr., but, having regard to the materials placed before him, the Land Acquisition Officer, by his award dated July 30,

1980 offered compensation to the claimants at the rate of Rs.2.50 ps to Rs.5.00 per sq.mtr for agricultural lands and non-agricultural lands respectively. By the said award, the land owners were also offered compensation at the rate of Rs.1.00 per sq.mtr for private roads and common plots. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Surendranagar, which were numbered as Land Acquisition Reference Nos.24 of 1981 to 27 of 1981. In the reference applications, the claimants pleaded that the lands acquired were very valuable, and having regard to over all development, which had taken place near the acquired lands, as well as potentiality of the agricultural lands for building purpose, they were entitled to higher compensation. In view of different nature of the acquired properties, the claimants had claimed different amounts of compensation ranging between Rs.10 to Rs.24 per sq.mtr before the Reference Court. The reference applications were contested by the present appellant vide written statement Exh.7. The reference applications were amended and, therefore, amended reply was filed by the appellant at Exh.13. In the reply, it was stated that those claimants, who had not laid any claim in response to service of notices under Section 9 of the Act, were not entitled to any enhanced compensation. It was pleaded that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.8. In order to substantiae the claim advanced in the reference applications, the claimants examined (1) Narshibhai Ramjibhai at Exh.14; (2) Govindbhai Shivabhai at Exh.15; (3) Ganeshbhai Shamjibhai at Exh.16; and (4) Vikramsinh Natwarsinh at Exh.32. On behalf of the appellant, three witnesses were examined, namely, Rajendrakumar Shantilal at Exh.37; Valji Dahyabhai Waghela at Exh.40 and Parshottam Nanjibhai Bhesjaria at Exh.41. The claimants had also produced documentary evidence in support of their claim for higher compensation. On appreciation of evidence, the Reference Court held that the compensation offered by the Land Acquisition Officer for agricultural and non-agricultural lands was inadequate. The Reference Court noticed that the lands under acquisition were very near to the northern boundary of the city of

Surendranagar and huge development at the relevant time had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the lands under acquisition for development of Surendranagar city. Having regard to nature of acquisition, the Reference Court was of the opinion that the lands under acquisition should be treated as a big homogeneous parcel of the plots consisting of several big and small plots of lands and there was uniform potential value with respect to non-agricultural lands as well as agricultural lands under acquisition. In view of the over all development which had taken place near the acquired lands, the Reference Court deduced that it was not necessary to resort to belting method while ascertaining the market value of the acquired lands. It was further held by the Reference Court that the claimants were entitled to same amount of compensation as may be determined for non-agricultural lands in respect of common plots and roads acquired. After taking into consideration documentary evidence produced by the parties, the Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 663, 719, 580, 633 and 606 were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.12/- per sq.mtr by the impugned common award, which has given rise to the present appeals. We may state that the Reference Court also granted statutory benefits available to the claimants under different provisions of the Act.

3. The learned Government Counsel submitted that the sale instances relating to Survey Nos. 663, 719, 633, and 606 were not proved and, therefore, the same could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was submitted that development in the nearby area had taken place after the acquisition of the lands in the present case and, therefore, the said development could not have been made basis for the purpose of determining market value of the acquired lands. The learned Counsel vehemently submitted that there cannot be uniform potential value of the lands irrespective of fact whether the land is non-agricultural land or agricultural land and, therefore, uniform determination of market value for agricultural as well as non-agricultural lands made by the Reference Court should be set aside. It was pleaded that the sale instances referred to by the witnesses of the State Government ought to have been relied upon for the purpose of determining market value of the acquired

lands and the Reference Court was not justified in not considering the same at all. It was asserted that the Land Acquisition Officer had made his award on July 30, 1980 and, therefore, direction to pay additional amount of compensation under Section 23(1-A) of the Act should not have been granted by the Reference Court. It was further contended that the claimants were not entitled to interest on solatium payable under Section 23(2) of the Act and, therefore, direction given by the Reference Court to the appellant to pay the said amount also deserves to be set aside. It was claimed that, having regard to nature of acquisition, belting method ought to have been adopted and uniform compensation should not have been determined for all the acquired lands. What was stressed was that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.12/- per sq.mtr and, therefore, the impugned common award should be set aside.

4. Mr. G.M. Amin, learned counsel for the claimants, submitted that similarly situated other lands of the same village were acquired by the State Government pursuant to publication of preliminary notification under Section 4(1) of the Act on June 28, 1973 for the same public purpose and the award made by the Reference Court in respect of those lands as modified by the High Court in First Appeal Nos. 1555 of 1988 to 1576 of 1988, should be made basis for the purpose of determining the market value of the lands acquired in the present case. The learned counsel vehemently contended that possession of the acquired lands was taken on December 10, 1973 and, therefore, direction given by the Reference Court to pay interest on the enhanced amount of compensation at the rate of 9% per annum from January 1, 1980, for one year, and thereafter to pay interest at the rate of 15% per annum till realisation of the amount should be set aside. It was submitted that the determination of compensation by the Reference Court was not on higher side and, therefore, the appeals filed by the State Government should be dismissed.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective

profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining the market value of the acquired lands. Those sale instances are tabulated in paragraph 29 of the judgment. However, the sale instances in respect of Survey Nos. 663-paiki, 719, 580, 633-paiki and 606-paiki are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The best evidence of the value of the property are sale transactions in respect of the acquired lands and in absence of such sale transactions, the sale transactions relating to neighbouring lands in the vicinity of the acquired lands can be taken into consideration. When sale transactions relating to neighbouring lands in the vicinity of the acquired lands are relied upon, the features which are required to be presented before the Court are (i) the transactions must be within a reasonable time of the publication of notification; (ii) the transactions should be bona fide transactions; (iii) they should be relating to the lands similar to the lands acquired or the lands adjacent to the lands acquired; and (iv) they should relate to the lands possessing similar advantageous features. These are the relevant features to be taken into consideration to prove the market value of the acquired lands as on the date of notification published under Section 4(1) of the Act. These relevant features can be established by examining either vendor or vendee or, when they are not available, by examining scribe of the document. In the present case, the claimants had not examined either vendor or vendee or scribe of the documents to present the relevant features relating to sale of Survey Nos. 663-paiki, 719, 580-paiki, 663-paiki and 606-paiki. Under the circumstances, the sale transactions relating to those survey numbers could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands on the relevant date. In the case of State of Gujarat and others vs. Rama Rana and others, 1997 (3) GLR 1954, the Supreme Court has ruled that the Court has statutory duty to subject evidence to a great scrutiny and to award a just compensation to the claimants in case of compulsory acquisition of lands. The fact that pursuant to publication of preliminary notification under Section 4 (1) of the Act on June 28, 1973, other lands of village Dudharej were acquired for this very purpose, is not in dispute. With reference to acquisition of those lands, the Land Acquisition Officer

had made award on May 2, 1983 and offered compensation to the claimants at the rate of Rs.2.50 ps to Rs.5.00 per sq.mtr for agricultural and non-agricultural lands respectively. Feeling aggrieved by the said offer of compensation, the claimants had sought references and in the Land Acquisition References Nos. 2/84 to 22/84 and 37/84, the Reference Court by common judgment and award dated December 31, 1987, had awarded compensation to the claimants at the rate of Rs.12/- per sq.mtr. Feeling aggrieved by the said award of the Reference Court, the State Government had preferred First Appeals Nos. 1555 of 1988 to 1576 of 1988 and the Division Bench, vide common judgment and order dated march 23, 1999, has held that the claimants in those cases were entitled to compensation at the rate of Rs.12/- per sq.mtr for non-agricultural lands and at the rate of Rs.9/- per sq.mtr for agricultural lands. The award given by the Court is, at least, relevant material and may be in the nature of admission with regard to value of the lands on behalf of the State and if the land involved in the award is comparable land and in reasonable proximity of the acquired lands, the rate found in the said award would be a reliable material to afford a basis to work upon for determination of compensation for similarly acquired lands. The award of the Court, therefore, cannot be dismissed as inadmissible for the purpose of determination of compensation. A judgment of a court in a land acquisition case determining market value of a land in the vicinity of the acquired lands, even though not inter-partes, can be relied upon either as an instance or one from which the market value of the acquired lands could be deduced or inferred. The witnesses examined on behalf of the claimants have stated in their evidence that the lands acquired in the present case were similar to the lands, which were subject matter of Land Acquisition Reference Nos. 2/84 to 22/84 and 37/84. In view of the well settled legal position that the previous award of the Reference Court in respect of the similar lands acquired from the same village can be relied upon for the purpose of determining market value of the lands acquired from that very village, we are of the opinion that the claimants should not fail merely because the sale instances could not be proved by them as required by law and the market value of the acquired lands can be determined on the basis of the previous award. We may state that the previous award of the Court is based on sale instances and, therefore, would furnish good guide for the purpose of ascertaining the market value of the acquired lands in the present case. It is true that, in the said case, the Reference Court had awarded compensation to the claimants at uniform rate of

Rs.12/per sq.mtr for agricultural as well as non-agricultural lands, but the High Court, in First Appeals nos. 1555 of 1988 to 1576 of 1988, decided on March 23, 1999, has held that the claimants were entitled to compensation at the rate of Rs.12/- per sq.mtr for non-agricultural lands and Rs.9/- per sq.mtr for agricultural lands. The Reference Court was not justified in holding that there is uniform potential value with respect to non-agricultural lands and agricultural lands under acquisition and, therefore, the market value of both the kinds of lands should be uniform as well as identical. It hardly needs to be emphasized that an agricultural land is subject to several restrictions before it could be put to non-agricultural use. For the purpose of developing an agricultural land, one will have to incur expenditure for providing enough space for roads, sewers, drains, lay out, etc. Under the circumstances, agricultural lands and non-agricultural lands could not have been assessed on the same footing and appropriate deductions will have to be made for ascertaining the market value of the acquired agricultural lands on the basis of market value of the acquired non-agricultural lands. The Supreme Court has held in several reported decisions that the Court should deduct reasonable amount from the price of non-agricultural lands while ascertaining the market value of agricultural lands. Having regard to the facts and circumstances of the case, and in view of the previous award of the Reference Court as modified by the High Court in First Appeals Nos.1555 of 1988 to 1576 of 1988, we are of the opinion that interest of justice would be served if the market value of the agricultural lands acquired in the present case is assessed at Rs.9/per sq.mtr.

6. The submission that belting method ought to have been adopted has no substance and deserves to be rejected. We may state that before the acquisition proceedings were initiated, there was an over all development near the acquired lands and several structures had come up adjacent to the acquired lands. The evidence of witnesses examined by the claimants indicates that the development in the area had started since 1954 and there was pressure on the lands in Surendranagar town. It is not brought to the notice of the Court that the lands acquired were abutting on any National Highway or State Highway, though some lands acquired were near the State Highway. So far as the belting method is concerned, the Supreme Court in Land Acquisition Officer, Revenue Divisional Officer, Chittor vs. L. Kamalamma (SMT) Dead by LRS and others, (1998) 2

Supreme Court Cases 385, laid down as under:

> "When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages, Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

In view of the principles laid down by the Supreme Court in L. Kamalamma (supra), we are of the opinion that it is not necessary to resort to belting method while determining market value of the acquired lands. From paragraph 37 of the impugned award, it is evident that the Reference Court has held that the claimants would be entitled to additional amount of compensation as envisaged under Section 23(1-A) of the Act. We may state that the Land Acquisition Officer had made his award under Section 11 of the Act on July 30, 1980 and, therefore, provisions of Section 23(1-A) of the Act would not be applicable to the facts of the present case. Therefore, direction to pay additional amount of compensation as envisaged under Section 23(1-A) of the Act could not have been given by the Reference Court and the said direction deserves to be set aside. We further notice that, in paragraph 40 of the impugned award, the Reference Court has held that the claimants would be entitled to 15% interest as postulated by Section 34 of the Act on enhanced amount of compensation from January 1, 1980, but, the award of the Land Acquisition Officer read with deposition of witness Parshottam Nanjibhai Bhesjaria, recorded at Exh.41, clearly establishes that possession of the acquired lands was taken on December 10, 1973. Under the circumstances, direction given by the Reference Court to pay interest at the rate of 15% on the enhanced amount of compensation from January 1, 1980 will have to be set aside and it will have to be held that the claimants would be entitled to interest at the rate of 9% per annum from December 10, 1973 for a period of one year and thereafter at the rate of 15% per anum till the amount is realised. From the Schedule annexed to the award, it is evident that the direction is given to the appellant to pay interest on solatium payable

under Section 23(2) of the Act. Such direction could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Maharau Srawan Hatkar, Judgment Totay 1995 (2) S.C. 583. Therefore, the direction given by the Reference Court to the Acquiring Authorities to pay interest on solatium payable under Section 23(2) of the Act is also liable to be set aside. In view of our finding that the market value of the acquired agricultural lands will have to be determined on the basis of previous award of the Reference Court as modified by the High Court in First Appeals Nos.1555 of 1988 to 1576 of 1988, we hold that the claimants would be entitled to compensation at the rate of Rs.12.00 per sq.mtr for non-agricultural lands and at the rate of Rs.9.00 per sq.mtr. for non-agricultural lands.

7. For the foregoing reasons, all the appeals filed by the appellant are partly allowed. It is held that the market value of the acquired non-agricultural lands on the relevant date was Rs.12.00 per sq.mtr., whereas the market value of the acquired agricultural lands on the relevant date was Rs.9.00 per sq.mtr. The direction given by the Reference Court to pay additional amount of compenstion as envisaged under Section 23(1-A) of the Act is set aside. The claimants will be entitled to interest at the rate of 9% per annum from December 10, 1973 for a period of one year and thereafter at the rate of 15% per annum till the amount is realised. The direction given by the Reference Court to pay interest on solatium payable under Section 23(2) of the Act is also set aside. The rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. The office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

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(swamy)